

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-128849-16

Date:

February 21, 2020

TY:

### Legend

Taxpayer =

Company A =

State B =

Country C =

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

Fund 10 =

Fund 11 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =  
Date 8 =

Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =

Accounting Firm 1 =  
Accounting Firm 2 =

Dear :

This is in response to correspondence submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a mark to market election under section 1296 of the Internal Revenue Code with respect to its investment in passive foreign investment companies ("PFICs").

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data submitted may be required as part of the audit process.

## FACTS

Company A was organized as a State B corporation and is the common parent of an affiliated group of which Taxpayer was a member. Taxpayer is a diversified investment management company with an umbrella fund (a foreign entity) containing various sub-funds, including Fund 1, Fund 2, Fund 3, Fund, 4, Fund 5, Fund 6, Fund 7, Fund 8, Fund 9, Fund 10, and Fund 11 (collectively, the "Funds"). Each of the Funds was organized under the laws of Country C and was a PFIC within the meaning of section 1297 during the relevant taxable years.

Taxpayer made the investment in

- Fund 1 and Fund 2 on Date 1, Year 1,
- Fund 3 and Fund 4 on Date 2, Year 2,
- Fund 5 and Fund 6 on Date 3, Year 3,
- Fund 7 on Date 4, Year 3
- Fund 8 on Date 5, Year 3,

- Fund 9 on Date 6, Year 4,
- Fund 10 on Date 7, Year 4, and
- Fund 11 on Date 8, Year 5.

For the taxable years at issue, Company A contracted with Accounting Firm 1, to advise it on tax matters, including the U.S. federal income tax consequences of Taxpayer's investment in the Funds. For the taxable years at issue, Company A also engaged Accounting Firm 1 to provide tax compliance services, including the preparation of the consolidated U.S. income tax returns of Company A, of which Taxpayer was a member. Company A retained Accounting Firm 1's services on the basis that it employs tax professionals who are competent to render tax advice on U.S. federal income tax matters, including the tax consequences of a U.S. person owing stock in a foreign corporation. Further, Company A made available to Accounting Firm 1 the financial statements with respect to the Funds, as well as all other relevant information.

For the taxable years at issue, Accounting Firm 1 failed to identify the Funds as PFICs and failed to advise Company A or Taxpayer of the tax consequences of making, or failing to make, mark to market elections under section 1296 with respect to the Funds.

Company subsequently engaged Accounting Firm 2 to render tax advisory services and to prepare its consolidated U.S. federal income tax returns. Upon review, Accounting Firm 2 identified the Funds as PFICs and advised Company A to seek a private letter ruling requesting an extension of time to make the mark to market elections for the Funds.

Taxpayer has submitted affidavits, including affidavits from Accounting Firm 1, signed under penalties of perjury in support of this ruling request. In addition, Taxpayer has made the following additional representations with respect to the mark to market election:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than that the Funds would have had if the election had been made timely (taking into account the time value of money).
3. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Taxpayer did not choose to not file the election. Rather, Taxpayer was unaware of the status of the Funds as PFICs.
5. Taxpayer is not using hindsight in requesting relief. No specific facts have changed since the due date for making the elections that now make the elections more advantages to Taxpayer.
6. As of the date of Taxpayer's request for ruling, the PFIC status of the Funds has not been raised by the IRS on audit for the taxable year at issue.

## LAW

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a U.S. person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. §1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. §301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer

- (i) requests relief before the failure to make the regulatory election is discovered by the IRS;

- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; or
- (iv) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

## CONCLUSION

Based on the information and representations submitted, we conclude that Taxpayer satisfies the requirements for a reasonable extension of time to make the mark to market election under section 1296 of the Code with respect to each Fund. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election under section 1296, with respect to

- Fund 1 and Fund 2 for its taxable year ending on December 31, Year 1,
- Fund 3 and Fund 4 for its taxable year ending on December 31, Year 2,
- Fund 5, Fund 6, Fund 7, and Fund 8 for its taxable year ending on December 31, Year 3,
- Fund 9 and Fund 10 for its taxable year ending on December 31, Year 4, and
- Fund 11 for its taxable year ending on December 31, Year 5.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Kristine A. Crabtree

Kristine A. Crabtree  
Senior Technical Reviewer, Branch 2  
(International)

cc: